

Total Maximum Daily Load (TMDL) Program



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[Notices]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5988-8]

National Advisory Council for Environmental Policy and Technology--Total Maximum Daily Load Committee: Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host one meeting designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

DATES: The three day public meeting will be held on May 4-6, 1998, at the Westin Atlanta North at Perimeter Hotel, Seven Concourse Parkway, Atlanta, Georgia 30328, (770) 395-3940. The full Committee meeting is scheduled to begin Monday, May 4, 1998, at 9 a.m. and conclude at 5:30 p.m. The meeting will reconvene at 8:30 a.m. on Tuesday, May 5, 1998, and is scheduled to adjourn at 5:00 p.m. On Wednesday, May 6, 1998, the meeting will reconvene at 8:30 a.m. and conclude at 3:00 p.m.

The public input session is scheduled in conjunction with the full Committee meeting and will also be held at the Westin Atlanta North at Perimeter. It will occur on Monday, May 4, 1998, from 7:30 p.m. until 9 p.m.

ADDRESSES: Materials or written comments may be transmitted to the Committee through Hazel Groman , Designated Federal Officer, NACEPT/ TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, Designated Federal Officer for the Total Maximum Daily Load Committee at 202-260-8798.

Dated: March 17, 1998.
Hazel Groman,
Designated Federal Officer.
[FR Doc. 98-8217 Filed 3-27-98; 8:45 am]
BILLING CODE 6560-50-U

Total Maximum Daily Load (TMDL) Program

AGENDA

MEETING OF FEDERAL ADVISORY COMMITTEE ON TMDLS

**The Westin Atlanta North
Seven Concourse Parkway
Atlanta, Georgia**

May 4-6, 1998

Background

- This is the sixth of six meetings of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program. On May 6, the Committee will present its recommendations for strengthening the TMDL program to both the Deputy Administrator and Assistant Administrator for Water of the United States Environmental Protection Agency (EPA).
- On March 2, 1998, the Committee's facilitators distributed a draft report to the members for their review and comment. Based on comments received, revisions were made and a revised draft distributed to members on April 24, 1998. The April 24 draft report will be used by members in their discussions at the meeting in Atlanta. (Copies of the April 24 draft will be available to the public at the meeting.)
- The draft report includes a number of placeholders for unresolved issues. Other significant issues have been raised in member comments and proposals. The focus of this meeting will be on resolving these issues and proposals.

Meeting Approach

- The meeting will begin on Monday, May 4 at the Westin Atlanta North Hotel, with Committee review and possible modification of this agenda, followed by a brief update from the U.S. Environmental Protection Agency on recent developments related to the TMDL program.
- Next, the Committee will review and may revise a list of remaining outstanding issues. The Committee will then categorize/rank those issues.

- The remainder of the meeting will be focused on resolving the outstanding issues. The Committee may assign small groups to certain issues to frame them for Committee decision. However, most of the meeting is expected to be conducted in plenary session.
- On the morning of Wednesday, May 6, the Committee will present the highlights of its deliberations and recommendations to EPA Deputy Administrator Fred Hansen and Assistant Administrator for Water Bob Perciasepe. A discussion period will follow the presentation.
- The Committee meeting will be open to the public. A formal public comment session will be held beginning at 7:30 PM on Monday, May 4.
- Committee members may find lunch at restaurants in and around the hotel, according to their preference. Working lunches may be scheduled during the meeting. On Tuesday evening, Committee members will be invited to share dinner together at a local restaurant.

FEDERAL ADVISORY COMMITTEE ON TMDLs

Agenda for 6th Meeting
May 4-6, 1998
The Westin Atlanta North Hotel
Atlanta, GA

Monday, May 4, 1998

9:00 AM	Welcome; Adopt Minutes from Portland and Salt Lake City; Opening Remarks from EPA; Review Process and Definition of "Consensus"
9:45 AM	Agree on Issues to Be Addressed (Review/Revise/Rank/Schedule)
10:30 AM	Break
10:45 AM	Develop Consensus
12:30 PM	Lunch (Working?)
1:30 PM	Develop Consensus
3:00 PM	Break
3:15 PM	Develop Consensus
5:30 PM	Dinner (on your own)
7:30 PM	Public Comment Period
9:00 PM	Adjourn

FEDERAL ADVISORY COMMITTEE ON TMDLs

Agenda for 6th Meeting, *continued*

Tuesday, May 5, 1998

8:30 AM	Develop Consensus
10:30 AM	Break
10:45 AM	Develop Consensus
12:00 PM	Lunch (Working?)
1:00 PM	Develop Consensus
3:00 PM	Break
3:15 PM	Discuss Presentation for EPA Officials
5:30 PM	Adjourn
6:30 PM	Group Dinner

FEDERAL ADVISORY COMMITTEE ON TMDLs

Agenda for 6th Meeting, *continued*

Wednesday, May 6, 1998

8:00 AM	Committee Presentation to Fred Hansen and Bob Perciasepe
8:45 AM	Discussion with Fred Hansen and Bob Perciasepe
9:30 AM	Break (Fred Hansen will need to leave at 9:30 AM)
9:45 AM	Continue Discussion with Bob Perciasepe
11:00 AM	Develop Consensus (Bob Perciasepe will have to leave at 11:00 AM)
12:00 PM	Lunch (Working?)
1:00 PM	Process Check; Outstanding Issues; Process for Approving/Signing the Report
3:00 PM	Adjourn

Total Maximum Daily Load (TMDL) Program

Federal Advisory Committee on Total Maximum Daily Loads (TMDLs)

Summary of Meeting Six

May 4-6, 1998
Westin Atlanta North
Atlanta, Georgia

Note: The minutes were reviewed and approved by the full FACA committee on May 29, 1998.

Contents:

Meeting Overview
Participants

Monday, May 4, 1998

Welcome and Introductions
EPA Update
Agenda Review and Ground Rules
Issues to be Addressed

- Enforceability considerations in TMDL allocation decisions
- Flow and the use of the term "pollution" versus "pollutant"
- Legacy problem definition
- Proposal regarding deadlines for attainment
- Reopening permits and licenses issued by Federal agencies (other than EPA) to reflect TMDLs
- Appropriate milestones and deadlines for TMDL development and defining high priority TMDLs
- Proposal regarding exceptions to the "TMDL prohibition" based on environmental benefit

Public comment period

Tuesday, May 5, 1998

Issues to be Addressed (continued)

- Implementation plan (level of detail, process for revision)
- State capacity concerns
- Proposal regarding geographic scope
- Proposal regarding threatened waters
- Proposal regarding a high priority monitoring list
- Proposal to revise the section in the report on flow modifications

Addressing Minor Word Changes

Wednesday, May 6, 1998

Committee Presentation to Fred Hansen and Bob Perciasepe
List of Unaddressed Issues and Meeting Adjournment . .

Meeting Overview:

This meeting summary describes the discussions and actions that occurred at the sixth and final meeting of the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs). The meeting was held May 4-6, 1998 in Atlanta, Georgia. The following were the primary outcomes of the meeting:

- The Committee reviewed, revised, and prioritized its list of remaining outstanding issues.
- The Committee spent the majority of the meeting resolving these outstanding issues.
- The Committee was able to reach consensus on language providing recommendations on the following previously unresolved issues:
 - Enforceability considerations in TMDL allocation decisions
 - Legacy problem definition
 - Reopening permits and licenses issued by federal agencies (other than EPA) to reflect TMDLs
 - Milestones and deadlines for completing high priority TMDLs
 - Defining high priority TMDLs
 - Implementation plan (level of detail, process for revision)
 - State capacity concerns
 - Proposal regarding geographic scope
 - Proposal regarding threatened waters
- The Committee was unable to reach consensus on the following issues: Proposal regarding deadlines for attainment (discussion of issue to be included in report) Use of the term "pollution" versus "pollutant" (discussion of issue to be included in report)
 - Proposal regarding exceptions to the prohibition on new and additional discharges based on environmental benefit
 - Proposal regarding a high priority monitoring list
- The Committee received additional input on the TMDL Program and related water quality issues during a public comment period held Monday evening.
- The Committee presented its recommendations for strengthening the TMDL program to both the Deputy Administrator and Assistant Administrator for Water of the United States Environmental Protection Agency (EPA).
- The Committee agreed on a process for reviewing the final draft of its report and

sending it to members for consensus.

Participants:

Committee Members in Attendance:

Bob Adler	Fredric Andes
John Barrett	Nina Bell
J. Brad Burke	Phil Cummings
Cheryl Creson	L.D. McMullen
Jane Nishida	William Nielsen
Robert Olszewski	Richard Parrish
John Roanhorse	Danita Rodibaugh
*Barbara Romanowski	Melissa Samet
Linda Shead	Susan Sylvester
Lydia Taylor	Ed Wagner

* Barbara Romanowski participated on behalf of Dale Givens.

Committee Members Absent:

Dale Givens

Ex-Officio Committee Members in Attendance:

Art Bryant, U.S. Forest Service
John Burt, Natural Resources Conservation Service
Geoff Grubbs, U.S. Environmental Protection Agency

EPA Representatives:

Bob Perciasepe, Assistant Administrator, Office of Water
Jim Curtin, Attorney, Office of General Counsel
Hazel Groman, Designated Federal Official, AWPDP, OWOW
Fred Hansen, Deputy Administrator
Jannell Young, Office of Cooperative Environmental Management

Public Attendance:

Approximately 25 members of the public attended the meeting.

Facilitator:

Martha Prothro, Ross & Associates

Conference Support:

Ross & Associates and Tetra Tech, Inc..

Monday, May 4, 1998

Welcome and Introductions:

Martha Prothro officially opened the meeting by welcoming the Committee, the State and EPA representatives in attendance, and the general public. Each Committee member, the Ex Officio members, and the EPA representatives then introduced themselves to the public. The Committee also approved the meeting summaries from the Portland and Salt Lake City meetings.

EPA Update:

Geoff Grubbs, Ex-Officio Committee member and Director of EPA's Assessment and Watershed Protection Division, once again thanked the Committee members for all of their efforts and emphasized the importance of the Committee reaching consensus on as many of its outstanding issues as possible. He said that he was very pleased with the draft report and that he was looking forward to the Committee's presentation to Fred Hansen and Bob Perciasepe on Wednesday.

Mr. Grubbs then briefly updated the Committee on several developments affecting the TMDL program since the Salt Lake City meeting in January:

- Mr. Grubbs distributed an updated summary of the TMDL litigation by state. He informed the Committee that, since the Salt Lake City meeting, notices of intent were filed in South Dakota, Ohio, and Virginia and complaints were filed in the District of Columbia and Florida. The consent decree for Kansas was also entered with the court.
- Mr. Grubbs reported that EPA had thus far received 1998 303(d) lists from 23 States and that another 15 States were very close to submitting their lists. Mr. Grubbs said that several States were running behind schedule and that EPA would be ready to promulgate lists for those States if necessary.

Mr. Grubbs concluded by telling Committee members that EPA would be using the Committee's recommendations to develop a complete re-issuance of its TMDL guidance and that it would be making "surgical" changes to pertinent regulations. He told the Committee that several internal bureaucratic processes that are required to revise EPA regulations were already underway and that EPA is committed to having the new guidance and regulations finalized prior to the year 2000 listing cycle.

Agenda Review and Ground Rules:

The Committee reviewed the proposed agenda for the meeting as well as the ground rules it had adopted during previous meetings. The facilitator reminded the Committee that it had agreed that 18 votes would constitute a supermajority (and thus consensus) on an issue and also summarized the circumstances under which minority reports could be filed. The Committee also agreed that members could submit one-sentence summaries of issues that were important to an individual member but had not been fully addressed by the Committee. These one-sentence summaries would be included in a separate section of the Committee's final report.

Issues to be Addressed:

The Committee next discussed the unresolved issues that it would address during the meeting. A list of unresolved issues that had been identified by the Framework workgroup and the facilitators was distributed. (The unresolved issues had been identified based on comments that were submitted on the March 2, 1998 draft of the Committee's report). This list also included several proposals for addressing unresolved issues that had been developed by individual

members following the Salt Lake City meeting. After discussing this list of issues, the Committee decided that it was not necessary to further discuss the language on strengthening the CPP regulation. The Committee then agreed to address the remaining issues in the following order:

- Enforceability considerations in TMDL allocation decisions
- Flow and the use of the term "pollution" versus "pollutant"
- Legacy problem definition
- Proposal regarding deadlines for attainment
- Reopening permits and licenses issued by federal agencies (other than EPA) to reflect TMDLs
- Milestones and deadlines for completing high priority TMDLs
- Defining high priority TMDLs
- Proposal regarding exceptions to the prohibition on new and additional discharges based on environmental benefit
- Implementation plan (level of detail, process for revision)
- State capacity concerns
- Proposal regarding geographic scope
- Proposal regarding threatened waters
- Proposal regarding a high priority monitoring list
- Proposal regarding definitions of targets/endpoints; clarity on surrogates (later dropped) .

Note: For several of these issues the Committee began its discussion on one day and then finished its discussion for that issue on a later day. To make this meeting summary easier to follow, all discussions of an issue are summarized under the first day of the discussion.

Enforceability considerations in TMDL allocation decisions (pp. 40-42 of 4/24/98 report):

Several Committee members had expressed concern with the March 2 draft report language on using enforceability as a consideration in making TMDL allocation decisions. This concern centered around the belief that point sources might be disproportionately burdened if enforceability was used as a criterion because, in some situations, it might not be possible to enforce controls on nonpoint sources. The Committee discussed this issue and reviewed several "strawman" proposals that had been developed to address this concern:

- Several members pointed out that the language in one of the strawman proposal stated that "States may consider enforceability of point and nonpoint source controls." These members felt that the use of the word "may" provided States with an adequate degree of flexibility in making allocation decisions. They also pointed out that States simply needed to "consider" enforceability, but could base their allocation decisions on a combination of criteria.
- One member said that the language in the proposal raised jurisdictional issues with respect to Tribal implementation of Clean Water Act programs. The Committee agreed to insert a note clarifying that this section of the report was not intended to steer jurisdictional issues in any manner.

Following its discussion, the Committee voted to adopt Option 2 from the strawman proposal list. Two members voted against the proposal and expressed an interest in filing a minority report.

Flow and the use of the term "pollution" versus "pollutant" (found throughout the 4/24/98 report; discussed on Monday morning and Wednesday afternoon):

Several members had commented on the use of the term "pollution" versus "pollutant" in the March 2 draft of the report. The facilitator pointed out that earlier reports had not consistently used these terms and that the March 2 draft had been changed so that the term "pollution" was consistently used. The following were among the comments that were made on this issue:

- Both "pollutant" and "pollution" show up in the statute and several Committee members agreed that a legal argument can be made for using either term.
- The regulated community is more comfortable with the term "pollutant" because it is more straightforward and easier to understand. Application of the term "pollution" will broaden the scope of the TMDL program too greatly.
- One option might be to list waters based on impairments caused by "pollution" but to restrict TMDL development to those problems that can be directly tied to a pollutant.
- *Use of the term "pollution" is fundamental to the hierarchy approach to developing TMDLs. One member suggested that he would not have been able to agree to the hierarchy approach if he had known that TMDLs were to be restricted to waters impaired by "pollutants".*

The Committee reviewed several proposals on addressing this issue and then agreed to form a small group that would attempt to develop new language. The Committee discussed this new language and several other proposals on Tuesday, but was unable to agree on any options. Members eventually agreed to leave the existing language in the report and voted to add a discussion of the opposing views on this issue. The Committee also agreed that the discussion would focus on policy rather than legal issues and that the report should note that it was only due to the drafting history of the report that the term pollution rather than pollutant was used.

Legacy problem definition (pp. 53-55 of 4/24/98 report; discussed on Monday afternoon and Tuesday evening):

The March 2 draft of the Committee's report included a placeholder recommendation to EPA to "define in regulations what constitutes a legacy problem, and provide guidelines for preparing implementation plans for legacy problems to assure, among other things, that implementation will be as expeditious as possible." Several Committee members stated that they were uncomfortable with this recommendation because of the uncertainty associated with what type of impairments would be classified as legacy problems. These members wanted the Committee to develop a more clear definition and recommendation for addressing these types of problems. The following comments were among those made by Committee members on this topic:

- It has proven difficult to develop a suitable definition of legacy problems and it has also been problematic to develop a full list of legacy problems. However, the Committee should not make policy recommendations for these types of problems if it can't define them.
- The important issue with respect to legacy-type problems is that the Committee needs to recommend that the waters should be listed and TMDLs developed. There is no need for the Committee to delve into the detailed language defining these types of problems.
- It is important to leave this discussion of legacy problems in the report. The regulated community views the language in the March 2 report as an important area of compromise and would be disappointed if the Committee removed it.

The Committee was unable to agree on several preliminary proposals to address this issue and a small group was formed to develop compromise language. This small group met Monday evening and developed a compromise proposal that was discussed on Tuesday. The compromise proposal changed the title "legacy problems" to "extremely difficult to solve problems" and separated these types of waters into two categories. The first category of these waters was based on the presence of (a) a physical structure or physical modification that

would be impossible or virtually impossible to remove; or (b) those instances where solving the problem will cause more environmental harm than good. The second category included circumstances where remediation/restoration is technically and/or practically very difficult and extremely costly, where the operation of large physical installations can be managed (but possibly involves costly modifications), where restoration is a function of processes that are inherently slow (i.e., growing trees), and where no federal, State, or local agency has legal authority to force active restoration. The Committee then discussed and agreed to a list of specific circumstances that would fit in each of those two categories.

One of the major issues that arose during this discussion had to do with whether the recommendations being made for extremely difficult to solve problems should also apply to impairments caused by flow modifications. (The new compromise language had suggested that they should not.) Several comments were made on this issue, including the following:

- It is very important to Western agricultural interests that the Committee recognize the complex nature of developing TMDLs for waters impaired by flow modifications. The Committee also needs to recognize that it will take longer to identify and implement the controls that will be necessary for these waters to attain water quality standards. The section in the report on flow either needs to refer back to the section on "extremely difficult to solve problems" or needs similar recommendations of its own.
- Several other Committee members felt that, because of the variety of impairments that can be related to flow modifications, it would be too open-ended to provide special considerations for all flow impairments.

Following this discussion (and after also discussing the pollutant versus pollution issue) the Committee agreed to amend the recommendation in the flow section (p. 59 of the April 24 report see below) and then voted on accepting the new (as amended) recommendations on "extremely difficult to solve problems". The Committee agreed to the new language with two members voting against the proposal (and therefore being eligible to file a minority report).

Proposal regarding deadlines for attainment (discussed on Monday afternoon and Tuesday evening):

The next unresolved issue discussed by the Committee dealt with a proposal that one member had developed regarding having EPA specify deadlines for attaining water quality. The following comments were among those made by various Committee members on this proposal:

- The Committee is not in a position to specify deadlines for attaining water quality. This is a decision that must be made on a case-by-case basis by the States and EPA.
- Several members felt that, given the current situation in which many TMDLs are not being implemented, it would be very important to include a deadline for attaining water quality because they would reinforce the pressure on States to implement the developed TMDLs.
- Specifying a deadline has ramifications because of EPA's potential disapproval of the TMDL and the means by which EPA would make those determinations.

After voting on several proposals, the Committee agreed that it would not be able to reach consensus on this issue but did decide to include a discussion of the issue in the report. This discussion was drafted by several Committee members and approved by the full Committee on Tuesday evening.

Reopening permits and licenses issued by Federal agencies (other than EPA) to reflect TMDLs (pp. 73-74 of 4/24/98 report):

Several Committee members had expressed concern regarding the fact that some non-EPA federal licenses (e.g., FERC, grazing, and timber harvest licenses) are very long (e.g., 50-year terms) and felt that the report should include a recommendation on whether these licenses should be re-opened during implementation of a TMDL. The facilitators reported that they had received contradictory comments on the language on this issue in the March 2 draft, as well as an acceptable time frame that should be specified for re-opening a permit. The facilitators pointed out that the proposed compromise language in the April 24 draft report is fairly general, stating that "existing permits and licenses must be reopened *within a reasonable time frame*." After a brief discussion the Committee agreed to adopt this compromise language with several clarifications (e.g., the Committee agreed to clarify that it would not be necessary to re-open a NPDES or other type of permit if the permit was scheduled to expire within a relatively short period of time, such as one year).

Appropriate milestones and deadlines for TMDL development and defining high priority TMDLs (pp. 25-30 of 4/24/98 report; discussed on Monday afternoon and Tuesday evening):

The Committee next discussed the issues of how to define high priority TMDLs and how EPA should set deadlines for developing high priority TMDLs. The Committee discussed the language in the April 24 report that stated that high priority TMDLs should be "completed and submitted to EPA for approval no later than six months after the end of the five-year timeline (or by another date approved by EPA)". Comments that were made on this language included:

- The new clause "or by another date approved by EPA" is too open-ended. Since the report includes several reasons that a State would be able to receive a one-time extension, the language is unnecessary.
- Not all States have prioritized their waters in the same manner. Adjoining States, for example, might have vastly different proportions of high priority waters. It would therefore be advantageous to keep the five-year deadline to pressure States to develop their high-priority TMDLs.
- Several members suggested that they were comfortable with the five-year deadline, except that in some situations the public participation component of a TMDL might be beyond a State's control and could jeopardize meeting the deadline.

The Committee eventually agreed to delete the "or by another date approved by EPA" clause and to adopt new language related to public comment and the circumstances under which EPA would grant an extension. New language was also added that addressed the appropriate length of the one-time extension. This new language was drafted by two Committee members and then adopted by the full Committee on Tuesday evening.

On the issue of defining high-priority TMDLs, it was pointed out that the facilitators had had to develop language themselves in the April 24 draft report (because no other acceptable language was available). The definition was developed based on the statutory considerations of establishing a priority ranking "taking into account the severity of the pollution and the uses to be made of such waters." The following issues were raised by various Committee members on this language:

- Several members had problems with using the term "keystone species" when evaluating the significance of a use of a water because it is not a nationally-recognized term. Other members disagreed and tried to explain the significance of the term "keystone" species.
- Several members were uncomfortable with the existing language stating that human health and important native aquatic species uses should not be "trumped" by historical, cultural, economic, or social uses.
- A proposal was made to insert a reference to environmental justice issues in this section of the report, especially as they relate to subsistence fishing.

- Several members expressed a concern that the Committee might be overly broadening the definition of high priority waters, especially since States would be required to develop TMDLs for these waters within five years.

Following these discussions the Committee voted on several options to modify the existing language. Eventually, the Committee agreed to take out all the examples in Steps One and Two (on page 29), to change the word "trump" to "take precedence over", to clarify that high priority should be assigned to waters with "demonstrable threats to important native aquatic species", and to delete the sentence reading "It is the Committee's intent that "high priority" waters be narrowly defined".

Proposal regarding exceptions to the prohibition on new and additional discharges based on environmental benefit (discussed on Monday afternoon and Tuesday morning):

The Committee next discussed a proposal that one member had put forth on exceptions that might apply to the prohibition on new discharges for listed waters. The idea behind the exceptions would be that the party requesting the exception would have to demonstrate that there would be a net environmental benefit to allowing an increased discharge to an impaired water. For example, the exception might allow for brownfield redevelopment of an industrial property, thus eliminating the need for a new discharge on a greenfield property. Among the comments made by members on this proposal were the following:

- One difficulty with this proposal is that it is unclear who would determine that there would be a net environmental benefit.
- Several members argued that the type of flexibility that this proposal provides is already incorporated into the stabilization plan recommendations. Other members disagreed, pointing out that all parties would need to agree to a stabilization plan whereas this proposal would allow one entity to act independently.

Following the discussion the Committee voted to reject the proposal. A revised proposal that was discussed on Tuesday morning was also rejected and the Committee voted to not include a discussion of this issue in the main body of the report.

Public comment period:

Martha Prothro opened the public comment period by welcoming everyone and explaining the role of the FACA Committee in providing recommendations to EPA on how to improve the TMDL Program. She said that the public sessions that have been held at previous meetings have been an important means by which the Committee has gained valuable insight from others.

Allison Shipp spoke to the Committee on behalf of the **U.S. Geological Survey (USGS), Water Resources Division**. She told the Committee that USGS had recently sponsored a workshop with EPA Regions 1 through 6 to share information on the legal issues associated with TMDLs and to provide information on the types of science and tools that are available to help develop TMDLs. Ms. Shipp said that several States have expressed an interest in this type of a workshop and in receiving assistance from USGS in setting up monitoring plans for TMDL development. Ms. Shipp also told the Committee she would be briefing the USGS District Chiefs on TMDL issues at a meeting in Williamsburg, Virginia later in the week.

Courtenay McCormick addressed the Committee on behalf of the **National Corn Growers Association (NCGA)**, an organization that represents approximately 375,000 corn growers farming 80 million acres nationwide. Ms. McCormick began by pointing out that NCGA questions whether there are legal authorities to extend section 303(d) of the Clean Water Act to

cover nonpoint sources. It is NCGA's contention that Congress intended nonpoint sources to be addressed under Section 319 of the Act. She also said that NCGA members have voiced concerns that sound science is not being used to list impaired waters or to allocate loads. Ms. McCormick also identified a variety of water quality programs that members of her organization have been active in supporting, such as the National Conservation Buffer Initiative, local watershed projects, adoption of voluntary nutrient management plans, and participation in federal and state cost-share conservation programs.

Doug Haines from the **Georgia Center for the Law and Public Interest** spoke to the Committee on behalf of a number of local environmental groups, as well as on behalf of the local chapters of several national environmental organizations. Mr. Haines first complimented the Committee on its hard work and said that he appreciated the difficult issues with which it was struggling. He then said that the Committee needed to focus first on water quality and should be less concerned with the issue of equity. He also said that the Committee should be recommending more dramatic changes to the TMDL program and that the time frames suggested in its report are not ambitious enough. Mr. Haines also suggested that TMDLs can serve as important educational and preventative tools and that scientific uncertainty should not prevent action.

¹**Ruth Swanek** spoke to the Committee on behalf of the **North Carolina Division of Water Quality**. She thanked the Committee for its hard work, but expressed a concern that it still had not yet offered a clear definition of what constitutes a TMDL. She also suggested that the 8-15 year time frame for developing TMDLs recommended by the Committee is not realistic given the limited resources available to States. She offered as an example the estimated 6,000 staff hours that had been devoted to developing a TMDL for the Neuse River. Ms. Swanek also said that if States are forced to develop TMDLs too quickly, they will be challenged by the regulated community and States might also, in an effort to develop technically defensible TMDLs, be forced to reduce their overall ambient monitoring programs.

¹ Submitted written comments to the Committee.

Robbi Savage addressed the Committee on behalf of the **Association of State and Interstate Water Pollution Control Administrators (AWIWPCA)**, the organization of state regulators that manage water quality programs across the country. Ms. Savage said that almost all of the States had submitted comments on the Committee's draft report. She told the Committee that the primary concern of the States is that the resources available for managing water quality programs have decreased over the years, while the programs they are being asked to manage have increased. She also said that the States are very concerned that other water quality programs should not be neglected because of the focus on TMDLs; TMDLs should not be the "center of the universe". Ms. Savage also said one State had pointed out that the Committee's report includes a great deal of tension in that some aspects of it reinforce the traditional programmatic approach to water quality management, while others suggest a more collaborative approach. Ms. Savage concluded by saying that the States are very committed to engaging the public in TMDL decisions and then answered several questions from the Committee on the funding needs of the States.

Barbara Romanowski spoke to the Committee on behalf of the **Louisiana Department of Environmental Quality**. She thanked the Committee for adding language on the resource needs of the States and then discussed some of the complex issues Louisiana faces in attempting to develop TMDLs. For example, most of the impairments in the state are due to fecal coliform contamination or low dissolved oxygen conditions, which are technically complex issues. Ms. Romanowski also pointed out the contradiction associated with recommending that States manage water quality on a watershed basis while at the same time forcing them to focus on their high priority waters within five years (i.e., a State's high priority waters will likely be scattered across the entire state). Ms. Romanowski concluded by recommending that the Committee retain as much flexibility in its report as possible and then answered several questions related to Louisiana's position on several specific issues. .

Tuesday, May 5, 1998

Issues to be Addressed (continued):

On Tuesday morning the Committee reviewed its decisions on the issues it had discussed on Monday and also decided to allow Barbara Romanowski from the Louisiana Department of Environmental Quality to participate on behalf of Dale Givens, who was not able to attend the meeting. The Committee then continued to discuss the remaining unresolved issues:

Implementation plan (level of detail, process for revision) (pp. 42-48 of 4/24/98 report; discussed on Tuesday morning and Wednesday afternoon):

The next issue that the Committee discussed was its recommendation that implementation plans be developed as part of a TMDL. Several members had expressed concern about the wording in the March 2 draft because they felt it too heavily burdened States to have implementation plans finished at the same time that the TMDLs were developed. Several members proposed that the implementation plans could possibly be due 180 days after the submittal of the TMDL. Committee members acknowledged that it was difficult to discuss this issue because they had not been able to agree as to whether implementation plans should be submitted to EPA under section 303(d) or 303(e). Comments made by Committee members on this topic included:

- Several Committee members were against delaying the development of the implementation plans because they felt they should be integrated into the TMDL development process.
- Some Committee members were worried about the States being able to "reasonably assure" that funding would be available to carry out portions of an implementation plan.
- At least one member suggested that the public participation component of implementation plans would make it difficult for a State to always complete the plan on time.

Following this discussion several Committee members worked on modifying the existing language to preserve the 303(d) versus 303(e) argument while at the same time clearly explaining the Committee's recommendations concerning the components of an acceptable TMDL. The Committee discussed and eventually approved this revised language on Wednesday afternoon.

State capacity concerns (executive summary p. v and pp. 82-85 of 4/24/98 report):

The next issue discussed by the Committee had to do with the States' capacity to implement all of the recommendations that were included in the Committee's report. Additional language had been added to the March 2 report to address these concerns and members wanted to be sure that everyone could agree to the new language. Several comments were made on this issue, including the following:

- Several members felt that the Committee needed to be more specific than simply recommending that State capacity be increased (since no one would disagree with that recommendation). These members proposed that the Committee try to identify those water quality programs that are lower priority than the TMDL program. Other members felt that it would be presumptuous of the Committee to try to make those determinations.

- At least one member felt it would be important for EPA to provide better tools to States, such as templates for TMDL development or monitoring guidance.
- Another member suggested that, in addition to increasing State staffing, the Committee should recommend that EPA staffing be increased to handle the anticipated increase in the TMDL workload.

After this discussion the Committee agreed to add language to Recommendation 4 on page 84 to address the need for EPA to increase its staffing so that it would be able to assist States in TMDL development, as well as to be able to perform TMDL review and approval functions in a timely manner. The Committee also agreed to add language recommending that States should propose to EPA those water programs from which they would be willing to shift resources to the TMDL program. The Committee also agreed to make more specific recommendations in the report that financial assistance should also be provided to Tribes to increase their capacity.

Proposal regarding geographic scope:

The Committee next discussed a proposal that one member had developed addressing the appropriate geographic scope for TMDL development activities. The Committee had not previously discussed this issue in great detail, but several members felt it was important to include in the final report. Among the comments made by Committee members were the following:

- A few members were uncomfortable with the proposal because it seemed to unnecessarily increase the extent of waters that might be listed as being impaired. These members said that the entities they represent had become very comfortable with the idea of listing impaired segments as opposed to impaired watersheds. Other members of the Committee clarified that the proposal primarily focused on TMDL development activities.
- Several members expressed strong support for the proposal because it re-enforced the type of approaches that their States were already taking, especially the idea of "nesting" smaller watersheds together when trying to address impairments that cover very large land areas.
- One member pointed out that the proposal did not address important jurisdictional issues that will arise when developing TMDLs for watersheds that overlap political boundaries.

After its discussion the Committee agreed to adopt the proposal subject to several revisions that addressed the listing and jurisdictional concerns described above.

Proposal regarding threatened waters (discussed on Tuesday morning and Tuesday afternoon):

The Committee next reviewed a proposal that had been submitted regarding recommendations on how to address threatened waters. This proposal was described as a "last ditch" effort to include in the report some of the common ground that members had been able to agree to on this issue. (The Committee had previously decided that it would be unable to agree whether threatened waters should be listed under section 303(d)(1) or 303(d)(3)). The proposal included the general concepts that threatened waters should be placed on a discrete list for focused attention and that a watershed-based loading analysis should be performed before the State issues new or modified permits. The proposal also described two possible ways to implement these concepts. The following comments were made by members relative to this proposal:

- At least one State representative said that States should not be expected to develop loading analyses for threatened waters because of the resource constraints they are under.

- Several Committee members were concerned with a reference in a portion of the proposal stating that a water could be placed on a 303(d)(3) list for four years before it would be "defaulted" to the 303(d)(1) list.
- Several Committee members disagreed as to whether the loading analysis should have a restoration element to it.

Eventually the Committee agreed to adopt the proposal after revising it such that it read:

"The Committee members have agreed that the following measures should be taken to address threatened waters:

- These waters should be put on a discrete list for focused attention, with the goal of keeping them from becoming impaired.
- A watershed-based loadings analysis should be performed as soon as possible, consistent with the State's TMDL priority list, but at a minimum before the State issues new or modified permits that allow increased discharges to a threatened water or allows other actions that would contribute to increased pollution to a threatened water over which the State has approval authority. The analysis would not necessarily include all of the components of a TMDL for impaired waters, but would have to provide for restoration so that the water is no longer threatened."

Proposal regarding a high priority monitoring list (pp. 13-14 of 4/24/98 report):

Another proposal that the Committee reviewed was a set of suggested principles that could be placed in the report that could be used by States and EPA in identifying waters that should have a high priority for monitoring. One of the important principles in the proposal specified that States could separate these waters into "probably impaired" and "possibly impaired" waters. Categorizing waters in this manner would avoid situations in which waters are listed based on almost no information and would also help to identify those waters requiring relatively little further analysis. After several comments by States suggesting that this would "over-segregate" their lists, the Committee voted to reject the proposal. The Committee also voted to delete the language in the April 24 report that discussed the "High Priority Monitoring List" concept.

Proposal to revise the section in the report on flow modifications (pp. 58-60; discussed on Tuesday afternoon and Tuesday evening):

On Tuesday the Committee also discussed revising the section in the report on addressing impairments due to flow modifications. The flow issue had arisen in part due to the Committee's revision of the legacy discussion. Among the issues that were raised were:

- Some Committee members did not understand why impairments caused by flow modifications were unique and deserved their own section of the report. Other members suggested that flow problems were different than dams or other physical obstructions because they result from legal or institutional barriers. Although it might be difficult to remove these legal or institutional barriers, it is still possible (whereas it is not always possible to remove the physical obstructions).
- Some members pointed out that flow is also a special issue because it is an integral part of the TMDL equation and that one cannot have water quality if one does not first have water.
- Another consideration relative to impairments caused by flow modifications is that it will take a long time to implement the necessary solutions. Members need to recognize that the livelihood of many Western landowners is dependent on their water rights and any TMDL that alters these rights will need to be implemented slowly.

The Committee eventually agreed to replace recommendation #2 on page 59 of the April 24 draft of the report with the following new language:

"In situations where modifications to instream flow cause or contribute to water quality standards violations, the Committee recognizes that because of legal, institutional, and political difficulties, in some cases, more time for creative solutions or funding of those solutions may be needed for TMDL development and implementation. The Committee recommends that States and EPA consider these circumstances during the TMDL process."

After agreeing to the modification to recommendation #2, the Committee next voted on whether the flow section (as amended) should remain as a separate section or should instead be integrated throughout the report. The Committee voted to keep the flow discussion as a separate section. A proposal to include a discussion of the proposal to delete the section was rejected.

Addressing Minor Word Changes:

The next issue addressed by the Committee was the question of how to handle a number of "minor word changes" that members had submitted. These word changes ranged from grammatical edits to statements in the April 24 report that some members felt were factually inaccurate. After a short discussion, the Committee agreed that each member should submit these suggested edits to the facilitators so that they could be organized by page number. Furthermore, the Committee agreed that comments could only be made on text that had changed between the March 2 and April 24 drafts of the report (the reasoning being that members had had previous opportunity to comment on older text).

On Tuesday evening the Committee began to go through each of the "minor word changes" that had been submitted. The Committee decided that it would take 15 votes to accept a proposed wording change. The Committee spent Tuesday evening and part of Wednesday afternoon voting on each of these proposed word changes. .

Wednesday, May 6, 1998

Committee Presentation to Fred Hansen and Bob Perciasepe:

Fred Hansen, Deputy Administrator of the U.S. Environmental Protection Agency, and Bob Perciasepe, Assistant Administrator for Water, attended the meeting on Wednesday morning to receive the Committee's final recommendations. Fred Hansen began by thanking members for their hard work, told them that their ideas had already had an important impact within EPA, and said that the emphasis on TMDLs represented a an increased focus on a water quality-based approach to managing the Nation's waters. Mr. Hansen also told the Committee he agreed with its emphasis on implementation and that he felt TMDLs would be an important tool to use to address impairments caused by nonpoint sources.

Four members delivered the Committee's presentation to Mr. Hansen and Mr. Perciasepe. The presentation was titled "Building a New Vision for the TMDL Program." The presenters summarized the Committee's charge, its history, its operating procedures, and some of the key principles that had guided its deliberations. These key principles were:

- Restoring impaired waters must be a high priority.
- Implementing TMDLs in the key to program success.
- Communication with the public is crucial.
- Stakeholder involvement is key to successful implementation.

- Governments' capacity needs to be strengthened.
- An iterative or adaptive approach will assure progress in the face of uncertainty.

The presenters also identified the three key elements to the Committee's vision of the TMDL program: the focus on restoring water quality, TMDL development, and the roles and responsibilities of various stakeholders. Some of the points that were made during the presentation on these three key elements included:

- The Committee agreed that the basic criteria for listing should be that (1) the water does not meet water quality standards and (2) the determination should be based on reliable data and information.
- One important new idea developed by the Committee is to have States conduct a watershed characterization/stabilization plan for each listed water. Existing regulations would restrict new or additional discharges until the TMDL is developed, thus encouraging early cleanup while the stabilization plan could address the restrictions' potential social/economic dislocation.
- The overall timeframe for TMDL development should be 8-15 years and States should submit TMDL development schedules that display a proportionate workload over time (i.e., no backloading).
- Waters should be de-listed once water quality standards are attained (instead of current EPA policy allowing them to be de-listed upon approval of a TMDL).
- Quantitative rigor is desirable in development of TMDLs. A reasonable minimum amount of data is necessary, but lack of certainty shouldn't delay action. A TMDL should include: target identification, identification of the deviation from target, source identification, allocation, implementation plan, follow-up monitoring/evaluation, and a process for revision.
- The approval criteria for a TMDL should be based on the hierarchy approach, which specifies that the highest level of quantitative rigor should always be applied and that a principle of "inverse proportionality" should be used if certain portions of the TMDL cannot be rigorously quantified.
- The principles to apply in allocating loads are that the allocations must achieve the TMDL and they should be equitable.
- States are the key implementers of TMDLs but they should involve EPA early and often in TMDL development activities.
- Tribes require technical assistance and education to develop the infrastructure required to manage their own water quality programs. EPA also needs to acknowledge the government-to-government relationship that exists between Tribes and the federal government.
- Federal agencies other than EPA should participate in TMDL development on federal lands and should also improve their water quality monitoring.
- EPA needs to take a leadership role in coordinating among federal agencies. EPA also needs to provide stronger science and tools to the States and participate in early, periodic technical assistance and review.
- Additional investments and/or reprogramming are necessary to provide the resources that will be needed to run a successful TMDL program. A national dialogue at high policy levels is needed to increase support for and commitment to restoring impaired waters.

During the presentation the Committee answered several questions posed by Mr. Hansen and Mr. Perciasepe concerning the timing of the proposed watershed characterizations and the nature of the stabilization concept. The Committee also pointed out that it had been unable to reach consensus on several difficult issues. Although Mr. Hansen had to leave shortly after the Committee's presentation, Mr. Perciasepe stayed until lunch and discussed a number of issues with the Committee. These issues included the need for EPA to increase staffing of the TMDL program, the appropriate geographic scope for a TMDL, and the importance of implementing TMDLs using an adaptive management approach. Mr. Perciasepe also said that the changing nature of the TMDL program reflected a significant shift from federally-led water quality programs to those in which States will have the primary responsibility.

List of Unaddressed Issues and Meeting Adjournment:

After lunch the Committee finished addressing the minor word changes that had been proposed and then discussed the process by which members could submit issues that had never been fully addressed by the Committee. It was agreed that these would be limited to one-sentence descriptions that would be placed in a separate section of the report. The Committee also agreed that the final draft of the report should be distributed by May 21 and that members would have until May 29 to review the report and sign a form indicating their consensus. The final deadline for submitting minority reports was also set as May 29.

The Committee adjourned the meeting at approximately 3:00 PM..

Approval of Meeting Summary:

This summary of the sixth meeting of the Federal Advisory Committee on Total Maximum Daily Loads was mailed to each Committee member for his or her individual review (i.e., the Committee could not review the summary in plenary because the Atlanta meeting was the final meeting). No comments on the meeting summary were received and the summary was approved once the deadline specified in the cover letter had passed.

Hazel Groman
Designated Federal Official
Date June 8, 1998